

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 792 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and  
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

JUJARSINH B VIHOL

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Appearance:

MR MA BUKHARI APP for appellant.

MR ASHISH MAJMUDAR WITH MR PB MAJMUDAR for Respondent

Nos. 1, 3, 4

MR BR GUPTA for Respondent No. 2

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CORAM : MR.JUSTICE K.R.VYAS and  
MR.JUSTICE A.M.KAPADIA

Date of decision: 22/02/99

ORAL JUDGEMENT (Per A.M. Kapadia, J.):

1. Respondent No.1 - Jujarsinh Bhavansinh Vihol,  
Police Constable, respondent No.2 - Zalabhai Manjibhai  
Varsatap, Police Sub Inspector, respondent No.3 Madhukar  
Hilal Patil, Constable and respondent No.4 Somubhai

Mitabhai Vankar, Driver, working in traffic branch of Vadodara City Police Station at the relevant time, who were public servants within the definition and meaning of Section 21 of the Indian Penal Code ('IPC' for short) were tried by the learned Special Judge, Vadodara, in Special Case No. 5 of 1988 for commission of offence punishable under section 5 (2) of the Prevention of Corruption Act, 1947 ('the Act' for short) and Section 161 read with Section 34 of Indian Penal Code ('IPC' for short), on the accusation that all of them, on 9.11.1985, while they were on duty, at Fatehgunj four junction, Vadodara City, had demanded Rs.50/- as gratification (other than the legal remuneration) under the pretext of collecting entry fee from Ambalal Savjibhai, driver of matador No. GAL 6299 which was passing from the said road and accepted the said amount from Panch No.1, Kailashpuri Girdharpuri Gosai and in his presence also demanded and accepted gratification from other three drivers of their respective vehicles and thereby they have committed and abetted to the said offence.

At the conclusion of the trial, learned Special Judge recorded the finding of acquittal and resultantly he by judgment and order dated 23.6.1992 recorded order of acquittal in favour of the respondents herein.

State of Gujarat, feeling aggrieved by the aforesaid order of acquittal has filed this Criminal Appeal with the aids of Section 378 of the Criminal Procedure Code ('the Code' for short).

2. Brief facts giving rise to this appeal are as under:

2.1. Baburao Ramchandra Patil, Police Inspector, Anti Corruption Bureau ('ACB' for short), working at the relevant time in the office of ACB, Ahmedabad, received an information on 8.11.1985 to the effect that traffic police personnel working on Ahmedabad - Bhilad Highway, demanding demanding illegal gratification, under the pretext of entry fee, from the drivers of vehicles while they were passing through Ahmedabad - Bhilad Highway and they are harassing the drivers of the vehicles. Therefore, to verify the correctness of the said information, he instructed Mr. Pathan, a Police Sub Inspector, to arrange for two panchas and also instructed Police Constable Takhaji to hire a matador and also directed them to remain present at 10 P.M. near Dufnala. In pursuance of the said information, ACB constable Takhaji to hire a matador No. GAL 6299 with its driver Ambalal Savjibhai and selected two panchas, namely (1)

Kailashpuri Girdharpuri Gosai and (2) Jasubhai Balashanker Mehta as panchas and they were brought to the office of ACB and they were explained about the information which was received by Police Inspector Mr. Patil. Kailashpuri Girdharpuri Gosai was selected as Panch No.1 while Jasubhai Balashanker Mehta was selected as Panch No.2. Mr. Patil also arranged for Rs.500/each of Rs.50/denomination from the office of the Director of ACB, Ahmedabad, for the purpose of supplying in the trap. Thereafter usual experiment of anthracene powder was made in the presence of panchas and all of them were explained the use and characteristics of anthracene powder by showing the currency notes smeared with anthracene powder in ordinary light and in ultra violet lamp light. Thereafter said Rs.500/- were put in the pocket of Panch No.1 with instruction that unless and until demanded he should not touch the currency notes. Accordingly, first part of the panchnama was prepared in presence of both the panchas and police personnel and their signatures were also obtained beneath the same.

2.2. After completing the first part of the panchnama, the said convoy started from Ahmedabad to Bhilad in matador No.GAL 6299 which they have hired and the same was driven by Ambalal Savjibhai Thakor. Panch No.1 sat besides the driver on the front seat. Thereafter the convoy proceeded from Ahmedabad to Bhilad for verifying the correctness of the allegation of illegal demand of bribe. The driver was instructed to proceed on the Highway and if somebody asks to stop the vehicle, then the vehicle should be stopped and if somebody asks any amount, then Panch No.1 was instructed to pay and after that he must give signal by lighting torch.

2.3. It was the further case of the prosecution that on 9.11.1985 at about 2 at night, they reached near the junction of four roads, near Fatehgunj Fuvara, Vadodara. At that time the traffic police personnel standing with police mobile jeep No. GUB 9787 instructed them to stop the vehicle. Thereupon after stopping the vehicle, driver Ambalal and Panch No.1 Kailashpuri alighted from the matador. Thereafter accused No.1 demanded and accepted Rs.50/- from panch No.1 and also demanded and accepted bribe from the drivers of other three vehicles in their presence and thereafter panch No.1 gave signal by lighting torch. As per prosecution case, on getting this signal, all the members of the raiding party who were occupying seats in the matador went there and encircled the police jeep and the police personnel. Mr. Patil introduced himself as Police Inspector, ACB, Ahmedabad, and recovered the currency note of Rs.50/from

accused No.1 alongwith other notes in all worth Rs.1,500/-. In the said currency notes, Rs.50/- which was smeared with anthracene powder was also found. The number of the said note was tallied with the number noted down in the first part of the panchnama. Thereafter in search of pocket of accused No.2, Police Sub Inspector, Rs.1062/- were found which were also recovered. Same way, from the pocket of accused No.3 Rs.516/- were recovered while nothing was found from the pocket of accused No.4. Thereafter on completion of the trap, second part of the panchnama was prepared at the very place and signatures of both the panchas were obtained beneath the same.

2.4. On the basis of the aforesaid trap, Mr. Patil who was the captain of the team, has lodged complaint before the ACB, at Vadodara, and thereafter investigation was entrusted to ACB, Vadodara.

2.5. After taking over investigation, ACB, Vadodara recorded statements of witnesses, obtained sanction orders as required under the Act to prosecute the police personnel as being Public Servants and charge-sheeted the accused before the Special Court, Vadodara.

2.6. The learned Special Judge, Vadodara, framed charge against all the accused which was read over and explained to them to which they pleaded not guilty and claimed to be tried. Therefore, all of them were put on trial for commission of the aforesaid offences.

2.7. In order to substantiate the charge levelled against the accused, prosecution has mainly relied upon the oral testimony of P.W.1, Kailashpuri Girdharpuri Gosai, Ex.15 (Panch No.1), P.W.2, Ambalal Savjibhai Thakor, Ex.20 (Driver of Matador No.GAL 6299), P.W.3 Asarfali Fazelali Saiyed, Ex.21, who was driver of another vehicle from whom also alleged demand of illegal gratification was made and P.W.4, Baburao Ramchandra Patil, who lodged the complaint, at Ex.22. According to the prosecution, Mr. Patil had received information about the demand of illegal gratification under the pretext of entry fee by traffic police personnel on Ahmedabad Bhilad Highway, at Vadodara, and accordingly he arranged the trap and after trap the complaint was lodged in this regard.

2.8. Learned Special Judge, after recording evidence of the aforesaid four witnesses and after appreciating and evaluating the same and also considering the documents produced before him, came to the conclusion

that offence of demand of illegal gratification by the accused was not proved and, therefore, he recorded the finding of acquittal. It is this finding which is now on the anvil of this Court in this appeal at the instance of the State of Gujarat.

3. Mr. M.A. Bukhari, learned A.P.P. after taking us through the entire testimonial collections, contended that though Panch No.1 Kailashpuri and the driver Ambalal in whose presence alleged demand was made and bribe of Rs.50/- was accepted, have turned hostile, that fact by itself is not fatal to the prosecution case because there is ample evidence with respect to the demand and acceptance of illegal gratification in the form of evidence of Police Inspector Mr. Patil, who had received information from other sources and pursuant to the said information he arranged the trap and he was very much present in the vehicle and in his presence the muddamal currency note of Rs.50/- was recovered from the pocket of accused No.1 and it was the very currency note which was smeared with anthracene powder and the number of which was also noted down in the first part of the panchnama and put in the pocket of Panch witness No.1 and Panch witness No.1 has given at the time of demand to accused No.1. According to Mr. Bukhari, from the said piece of evidence, the demand and acceptance of illegal gratification was proved. He further contended that this Court (Coram: K.J. Vaidya and J.M. Panchal, JJ.) on 22.7.1992 while deciding Criminal Appeal No. 542 of 1992, has laid down certain guidelines and principles with respect to appreciation of the evidence of a running trap in corruption cases and in the said case this Court has also unequivocally held that even if a decoy witness is found hostile to the prosecution case, on the basis of the evidence of panch witnesses and the Police Inspector, order of conviction and sentence the accused can be passed in accordance with law. In view of the aforesaid facts and case law runs his further submission that in the instant case, there is ample evidence against the accused and, therefore, the judgment and order of recording acquittal is bad in law and hence the same requires to be quashed and set aside by holding the respondents/accused guilty for the said offences and accordingly they may be convicted and sentenced in accordance with law.

4. In counter submission, Mr. Ashish Majmudar strenuously contended that there is no evidence worth required to be considered. All the prosecution witnesses examined have not supported the prosecution version and on the basis of the evidence of Mr. Patil, only recovery

could be established and recovery, without proof of demand and acceptance, is not sufficient to constitute an offence and presumption cannot arise. He further contended that this was not a regular trap but it was a decoy trap and all the members of the raiding party in a decoy trap are accomplices and, therefore, their evidence is required to be scrutinised cautiously and carefully and in the instant case, only evidence of Mr. Patil is required to be scrutinised as same does not get corroboration from any witness or source. In this view of the matter, according to Mr. Majmudar, the alleged demand and acceptance of bribe by the accused was not proved and resultantly the learned Special Judge has very rightly recorded the order of acquittal which, according to him, does not warrant any interference by this Court.

5. So far as the capacity of respondent Nos.1 to 4 are concerned, admittedly, they were public servants at the relevant time to which the defence has also not raised any objection. Therefore, the said point does not detain us any further and hence we need not discuss that aspect elaborately and resultantly we uphold the finding of the learned Special Judge that all the accused persons were public servants at the relevant time.

6. Secondly, for prosecuting all the accused/respondents, sanction was obtained from the concerned department and no objection was raised by the defence in this regard. Therefore, we are of the opinion that the learned Special Judge has very rightly recorded that sanction for prosecuting the respondents/accused was obtained in accordance with law. Therefore, we refrain ourselves from discussing this point also at length.

7. The case against all the accused was that they demanded and accepted illegal gratification of Rs.50/- to which they were not legally entitled to in capacity of public servants in discharge of their official duty. Ingredients of the charge under Section 161 of IPC and under Section 5 (2) of the Act may be briefly narrated as under:

- (i) that the accused persons were public servants,
- (ii) that they must be shown to have obtained from any person any gratification,
- (iii) that the gratification should be other than legal remuneration as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in exercise of his official function favour or disfavour to the person.

8. When the first two ingredients are proved by the

evidence, a rebuttable presumption arises in respect of the third ingredient and in absence of proof of first two ingredients, the presumption does not arise. On mere recovery of certain amount from a person or accused, without proof of payment on behalf of such person to whom official favour was to be shown the presumption cannot arise (vide *Sitaram v. State of Rajasthan*, AIR 1975 SC 1432).

9. It must also be remembered that Section 161 of IPC requires that the public servant must in fact be in a position to do the official act, favour or service at the time of the demand or receipt of the gratification. To constitute an offence under this section, it is enough if the public servant who accepts the gratification, takes the same by inducing a belief or by holding out that he would render assistance to the giver 'with any other public servant' and the giver gives the gratification under the belief. It is further immaterial if the public servant receiving the gratification does not intend to do the official act, favour or forbearance which he holds himself out as capable of doing (vide *Chaturdas Bhagwandas Patel v. State of Gujarat*, AIR 1976 SC 1497).

10. Another important test which must be remembered is that where the recovery of money coupled with other circumstances leads to the conclusion that the accused received illegal gratification from some person, the Court would certainly be entitled to draw the presumption under Section 4 (1) of the Act. Even under Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, in their relation to the facts of the particular case (vide *Hazarilal v. The State (Delhi Administration)*, AIR 1990 SC 973).

11. Where in a trap case the Judge magnifies every minor detail or omission to falsely or throw even a shadow of doubt on the prosecution evidence, then it would be the very antithesis of a correct judicial approach to the evidence of witness in a trap case. Indeed, if such a harsh touchstone is prescribed to prove such a case, it will be difficult for the prosecution to establish any case at all (vide *State of Maharashtra v. Harsingh Rao Gangaram Pimple*, reported in AIR 1984 SC 63).

12. Thus, the Court of Special Judge or the Court of appeal hearing the appeal against the judgment and order of the Special Judge should invariably be aware of the correct judicial approach and see that it does not enter

into an exercise of magnifying minor details and omissions only with a view to falsify witnesses and throw overboard the prosecution case.

13. Keeping the aforesaid principles in forefront, we may now try to find out whether the prosecution has established its case against the accused beyond doubt that in their capacity as public servants the accused/respondents demanded Rs.50/- from Panch Kailashpuri under the pretext of collecting entry fee and accepted the said amount by way of illegal gratification and in their presence the accused also demanded illegal gratification from other three drivers of their respective vehicles.

14. Story of the prosecution against the accused is based on the oral testimony of four witnesses i.e., (i) P.W.1 Kailashpuri Girdharpuri Gosai, (ii) P.W.2, Ambalal Savjibhai Thakor, (iii) P.W.3, Asarafali Fazalali Saiyed and (iv) P.W.4, B.R. Patil.

15. Before advertng to the oral testimony of the aforesaid witnesses, it may be appreciated that this was not a case of regular trap but it was a case of decoy trap. It is also interesting to note that in this case Mr. Patil has not selected a person who could act as a punter. He has not handed over the currency notes to punter but to Panch No.1 only. Therefore, Panch No.1 Kailashpuri has acted in his dual capacity as punter and panch. However, prosecution has tried to get corroboration to the evidence of Panch No.1 from the evidence of the driver of the vehicle - Ambalal.

Now let us examine their evidence.

16. Advertng to the evidence of P.W.1, Kailashpuri, whose oral testimony was recorded at Ex.15, he inter alia testified that he was serving in Social Welfare Department. He was called by the ACB, Ahmedabad at 9 P.M. by sending ACB car and he was asked to act as per their instruction and in his presence experiment of anthracene powder was performed but he could not notice anything. In the pocket of his shirt notes smeared with anthracene powder were put and he was given certain instructions that if demand was made by anybody the notes should be given and thereafter he should give signal by lighting torch. He has further testified that they started from Ahmedabad to Vadodara and reached Vadodara at about 2 - 2.30 A.M. He has further testified that when they reached near circle, the matador was stopped. He does not remember at whose instance it was stopped.



However, the driver parked the vehicle. Thereafter the driver alighted from the matador and went to the traffic circle. After some time driver called him and took him to circle and the driver asked him to pay money. The driver also said that if Rs.50/- was paid they would be allowed to go. Thereafter he took out a currency note of Rs.50/- and tried to give to the Head Constable but he refused to accept. He, therefore, thrust Rs.50/- in his pocket and thereafter gave signal by lighting torch and on getting the signal all the members of the raiding party i.e., the persons who were sitting in the matador came there and from the pocket of accused No.1 currency note of Rs.50/- was taken out.

17. According to the prosecution, this witness has not supported the prosecution case and, therefore, he was declared hostile and with the permission of the Court, he was cross-examined at length by the learned Additional Public Prosecutor. In cross-examination also he stuck to the very version which he has stated in his examination-in-chief. He denied some of the contents of the panchnama. However, these contradictions were proved by prosecution during the examination of the complainant Mr. Patil. It may be appreciated that this witness is a panch witness. He has not supported the prosecution version and the prosecution has tried to get corroboration from the evidence of the driver Ambalal.

18. Now let us examine what was the say of P.W.2, Ambalal Savjibhai Thakor, who was the driver of the matador. His oral testimony was recorded at Ex.20. He inter alia testified that on 9.11.1985 he was serving as a driver of one Ram Prakash Sharma and he was driving his matador. They started from Ahmedabad at 11 P.M. for going to Vadodara. Some officers were sitting in the said matador. He does not remember their names. He was instructed to go to Surat side. In his presence it was told to the person who was sitting besides him that if somebody stops the matador on the way and demands money then money should be paid to him. They reached Vadodara at mid night. Nobody tried to stop their vehicle on the way. Thereafter in the city limits of Vadodara, a traffic police jeep was parked on the road and near the jeep a Head constable was standing and he raised his hands and gave signal to stop. He stopped the jeep and went to the Head Constable with his driving licence and RTO papers. Thereafter he was asked to call somebody from his vehicle. Thereafter he took the person who was sitting besides him. He has further testified that he asked the person who was sitting besides him to pay Rs.50/- to the constable so that they may proceed

further. The Head Constable refused to accept it. However, the person who was sitting besides him thrust a currency note of Rs.50/- into the pocket of the Head Constable. This witness has also not supported the prosecution case and, therefore, he was also declared hostile and he was cross-examined at length by the learned A.P.P. In cross-examination also he stuck to the very version which he has narrated in the examination-in-chief.

19. It may be appreciated that the aforesaid two witnesses examined by the prosecution are the witnesses of demand and acceptance. But none of them supported the prosecution story with regard to demand of illegal gratification and acceptance of bribe amount by the accused. Therefore, from the evidence of the aforesaid two witnesses, prosecution has miserably and utterly failed to establish the alleged demand and acceptance of illegal gratification by the accused.

20. The prosecution has also placed reliance on the oral testimony of P.W.3, Asarafali Fazalali Saiyed, whose oral testimony was recorded at Ex.21. Prosecution has examined this witness to prove the case of demand made by the accused from this witness when he was proceeding from Bhavnagar to Makarpura, Vadodara, while driving his truck No. GTS 6326. According to the prosecution, the accused demanded Rs.20/- from him in presence of both P.W.1 and P.W.2 and he has in fact paid the said amount. This witness has not supported the prosecution version. Therefore, his evidence is of no avail or assistance to the prosecution case.

21. Lastly the prosecution has examined P.W.4, B.R. Patil, whose oral testimony was recorded at Ex.22. He inter alia testified similar version as stated by him in his complaint, which we have dealt with at length while discussing the facts of the case. If we accept the evidence of Mr. Patil in its entirety, in that case also, at the most it can be said that only recovery is proved. It is settled legal position that on mere recovery of certain amount from a person or accused, without proof of payment on behalf of such person to whom official favour was to be shown the presumption cannot arise. If this is the legal position then the prosecution cannot be said to have proved the case against the accused so far as demand and acceptance of illegal gratification is concerned.

22. Mr. M.A. Bukhari, learned A.P.P. has drawn our attention to the decision of this Court (Coram: K.J.

Vaidya & J.M. Panchal, JJ.) rendered on 22.7.1992 in Criminal Appeal No. 542 of 1992, and contended that the principles elucidated by this court in the above mentioned case law can certainly bring into service in the instant case. We have gone through the judgment recorded in the said case and we are of the opinion that the facts of that case are different from the facts of this case. That was a case of running trap of gratification and in that case complainant whose service came to be requisitioned as a decoy witness turned hostile to the prosecution. However, this Court held that the evidence of panch witnesses, if gets corroboration from the evidence of Investigating Officer, the Court can certainly pass order of conviction. So far as the case in hand, admittedly, it is a running trap of a corruption case. But, unfortunately, the prosecution has not been able to secure the services of a complainant who could act as a punter in a decoy trap. In this case, the service of only panch No.1 was requisitioned who was asked to perform the role of decoy witness also, meaning thereby, on demand being made by accused he was instructed to pass on the currency note to the accused. However, in this case, prosecution has tried to get corroboration for the demand and acceptance from the evidence of driver Ambalal but unfortunately both the witnesses have not supported the prosecution version and both of them being infirm witnesses, no one could corroborate each other. When the demand and acceptance is not proved then, as observed hereinabove, mere recovery is of no assistance to the prosecution to prove the demand and acceptance of illegal gratification by the accused in view of the judgment relied upon by learned A.P.P. Mr. Bukhari cannot be attracted in the facts of the present case.

23. Now, another infirmity which we could notice in this case is that the complainant Mr. Patil had received certain information earlier about the alleged illegal demand of bribe by the traffic police personnel on Ahmedabad - Bhilad Highway. But unfortunately he has not recorded that information in his station diary. When a specific question was asked, he refused to reply from whom he received the information. He has further testified that he has received the information from owners of trucks that traffic police personnel are demanding illegal gratification under the pretext of entry fee. If this was the information received by him, then he ought to have selected some person as a complainant who could have been acted as a punter or decoy witness. Therefore, the basic substratum of the prosecution case is not established and without recording

entry in this regard in the station diary he had started the investigation.

24. On the basis of the evidence of the above prosecution witnesses as a whole, following aspects can be highlighted:

- (i) accused were public servants within the meaning of section 21 of IPC;
- (ii) there was legal and valid sanction accorded by competent authority for prosecuting the accused;
- (iii) P.W.1 who was a witness to the alleged demand and acceptance has not supported the prosecution case and, therefore, from his evidence said alleged demand and acceptance was not proved;
- (iv) P.W.2, Ambalal was the driver of the vehicle which was used for laying the trap. He was also a witness to the alleged demand and acceptance. But he has also not supported the prosecution story. Therefore, from his evidence also the alleged demand and acceptance of illegal gratification by the accused was not proved;
- (v) P.W.3, Asarafali was a driver of truck No. GTS 6326, from whom, as per prosecution case, illegal gratification of Rs.20/- was demanded by the accused in presence of P.W.1 and P.W.2 but this witness has also not supported the said allegation of demand and acceptance made by the accused persons;
- (vi) aforesaid three witnesses, i.e., P.W.1, P.W.2 and P.W.3 are all infirm witnesses. Therefore, no reliance can be placed upon their oral testimony;
- (vii) when demand and acceptance is not proved, from the evidence of P.W.4, Mr. Patil, who lodged the complaint, only recovery could be said to have been proved and as observed in earlier paragraphs of this judgment, recovery alone was not sufficient to establish the guilt of the accused;
- (viii) this was not a regular trap but it was a decoy trap. Mr. Patil - the complainant had not entered the information which he had received earlier in the station diary with regard to the illegal demand for gratification by the traffic police personnel working on Ahmedabad- Bhilad Highway.

25. Moreover, this is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe

to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned trial Judge. As this Court is in general agreement with the view expressed by the learned trial Judge, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned trial Judge for acquittal and in our view, expression of general agreement with the view taken by the learned trial Judge would be sufficient in the facts of the present case for not interfering with the judgment of the learned trial Judge and this is so, in view of the decisions rendered by the Hon'ble Supreme court in the case of Girija Nandini Devi and others v. Bijendra Narain Chaudhari, AIR 1967 SC 1124 and State of Karnataka v. Hema Reddy and another, AIR 1981 SC 1417. On overall appreciation of evidence, this court is satisfied that there is no infirmity in the reasons assigned by the learned trial Judge for acquitting the respondents/ original accused. Suffice it to say that the learned trial Judge has given cogent and convincing reasons for acquitting the respondents/ original accused and the learned A.P.P. has failed to dislodge the reasons given by the learned trial Judge and convince this Court to take a view contrary to the one taken by the learned trial Judge. Therefore, there is no merits in the acquittal appeal.

26. In view of the observations made hereinabove, in the facts and circumstances of the case and in the limelight of case law, it is abundantly clear that there is no evidence on record which could connect the accused with the offence alleged against them and on the basis of the said insufficient evidence, no conviction can be passed against the accused. Therefore, we are of the opinion that the prosecution has utterly and miserably failed to prove beyond doubt the charge levelled against the accused for the offence with which they stood charged. We are also of the opinion that the learned trial Judge has very rightly appreciated the evidence on record and reached to the just and correct conclusion. No conclusion other than the one arrived at by the learned trial Judge was possible in the facts and circumstances of the case. Therefore, we confirm the said conclusion.

27. Resultantly, the appeal filed by the State is found meritless and it being meritless, is dismissed.

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(karan)

